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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. .....

JEAN D. MUIRHEAD,
Petitioner,

vs.

JAMES DONALD SPANN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of the State of Mississippi

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INTRODUCTORY STATEMENT

The Petitioner, Jean D. Muirhead, respectfully petitions for a writ of certiorari to review a judgment and order made by the Supreme Court of the State of Mississippi unofficially reported as **State ex rel. Muirhead v. State Board of Election Commissioners**, 259 So. 2d 698, affirming the Circuit Court of the First Judicial District, Hinds County, Mississippi, which sustained the demurrer of James Donald Spann and dismissed the petition for writ of quo

warranto filed by Petitioner here. The opinion of the Mississippi Supreme Court handed down on March 20, 1972, is reprinted herein as Appendix A. Judgment of the Mississippi Supreme Court is reprinted herein as Appendix B.

Petition for rehearing was denied on April 10, 1972. The order denying the petition for rehearing is reprinted herein as Appendix C.

JURISDICTIONAL STATEMENT

Petitioner believes this Court has jurisdiction to review the decision by writ of certiorari by virtue of 28 USC 1257(3).

QUESTION PRESENTED FOR REVIEW

Whether or not, in determining if one is disqualified from holding public office by reason of a felony conviction, a state may refuse to take cognizance of felony convictions by a United States District Court sitting in said state for offenses which constitute felonies under both state and federal laws.

FEDERAL CONSTITUTIONAL PROVISION INVOLVED

This case involves Article IV, Section 1, Constitution of the United States, which provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

STATEMENT OF CASE

On April 13, 1953, respondent James Donald Spann pled guilty to, and was sentenced by the United States District Court for the Southern District of Mississippi on five felony counts.

In the November 1971 general elections, respondent, Democratic nominee for Mississippi Senate Post 5, 22nd Senatorial District, polled a majority of the votes cast. Petitioner, incumbent in the same senate post and candidate for re-election as the Republican nominee, polled the second largest number of votes cast.

This action was initially filed December 7, 1971, in the Circuit Court of the First Judicial District, Hinds County, Mississippi, by Jean D. Muirhead, incumbent state senator, against the members of the Mississippi State Board of Election Commissioners and James Donald Spann. By agreement of the parties, the members of the Mississippi State Board of Election Commissioners were dismissed as parties. Petitioner's Petition and Information in the Nature of a Petition for Quo Warranto sought to test respondent's right to hold public office on the ground that he was a convicted felon and prohibited from holding public office under the provisions of Section 44, Mississippi Constitution, reprinted herein as Appendix D.

Respondent's demurrer was argued before the Circuit Court on December 17, 1971, and was sustained by the trial judge. Petition for Quo Warranto was thereupon dismissed with prejudice and an appeal was taken to the Mississippi Supreme Court.

On March 20, 1972, the Mississippi Supreme Court handed down its opinion, unofficially reported in 259 So.

2d 698, sustaining the trial court, on the ground that a conviction which would bar respondent from office must necessarily be one rendered by a Mississippi state court or, in other words, even though Mississippi's constitutional language is "convicted of an infamous crime", the Mississippi Supreme Court interprets that to mean a conviction in Mississippi state courts.

Petitioner's petition for rehearing was denied by the Mississippi Supreme Court on April 10, 1972, and the petitioner, having exhausted her state remedies, petitions this Court for certiorari.

REASON FOR GRANTING THE WRIT

The decision rendered by the Mississippi Supreme Court is in conflict with decisions of this Court. This case is of particular importance in view of this Court's decisions in **First National Bank of Chicago v. United Air Lines, Inc.**, 342 U.S. 396, 72 S. Ct. 421, 96 L. Ed. 441 (1952); **Bute v. People**, 333 U.S. 640, 68 S. Ct. 763, 92 L. Ed. 986 (1947); **Supreme Lodge v. Meyer**, 265 U.S. 30, 44 S. Ct. 432, 68 L. Ed. 885 (1924); **Bigelow v. Old Dominion Copper Mining & Smelting Co.**, 225 U.S. 111, 32 S. Ct. 641, 56 L. Ed. 1009 (1912); **Pennoyer v. Neff**, 95 U.S. 714, 24 L. Ed. 565 (1877); **Claflin v. Houseman**, 93 U.S. 130, 23 L. Ed. 833 (1876).

ARGUMENT

A. The Judgment Below Ignores Article IV, Section 1, Constitution of the United States

The Full Faith and Credit clause of the United States Constitution requires that public acts, records and judicial proceedings of states be judicially noticed by other states. Pursuant to this constitutional section, Congress enacted 28 U.S.C. 1738 which requires that acts, records and judicial proceedings shall have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage in the courts of the state, territory or possession from which they are taken.

It is petitioner's position that **Supreme Lodge v. Meyer**, 265 U.S. 30, 44 S. Ct. 432, 68 L. Ed. 885 (1924), requires state courts to accord full faith and credit to the judicial proceedings of federal courts.

Federal courts are bound to give to judgments of state courts the same faith and credit which the courts of another state are bound to accord them.

Conversely, state courts are to take cognizance of actions by federal courts to a like degree that they give federal laws and treaties. It has been said that state courts and federal courts together form one system of jurisprudence, which constitutes the law of the land for the state; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country. **Claflin v. Houseman,** 93 U.S. 130, 23 L. Ed. 833 (1876).

Consistently, this Court has maintained that state courts must accord full faith and credit to federal court actions. **First National Bank of Chicago v. United Air Lines, Inc.,** 342 U.S. 396, 400, 72 S. Ct. 421, 423, 96 L. Ed. 441 (1952).

When the question was considered in 1947, this Court, in **Bute v. People,** 333 U.S. 640, 672, 68 S. Ct. 763, 92 L. Ed. 986, said:

> "Governmental stability depends upon the giving of full faith and credit in form, substance and spirit to public acts, records and judicial proceedings, not only among the states but among individuals and between their State and Federal governments."

Earlier, this Court had said:

> "Conversely, if the federal courts are bound to extend full faith and credit to proceedings in state courts, state courts must reciprocate. The judgment of a federal court was entitled . . . to the same faith and credit which would have attached to a judgment of a state court." **Pennoyer v. Neff,** 95 U.S. 714, 24 L. Ed. 565 (1877)

This position was reaffirmed in **Bigelow v. Old Dominion Copper Mining & Smelting Co.**, 225 U.S. 111, 32 S. Ct. 641, 56 L. Ed. 1009 (1912).

If a law of the United States is binding upon a state and its courts, a judgment of a United States Court should be equally binding, and a conviction therein must be recognized and accorded the same force and effect as a judgment of a state court.

The Mississippi Supreme Court, by its decision, has allowed respondent to assume and retain the office of state senator and receive all the rights and emoluments flowing therefrom. If this Court determines that Mississippi must take cognizance of federal court decisions, respondent will thus be disqualified. Petitioner, as the incumbent at the time respondent assumed the office, is entitled under Mississippi law to hold over until her successor is duly elected and qualified, and is entitled to the rights and emoluments now enjoyed by respondent.

CONCLUSION

Respondent has now held office for several months, has exercised the duties of state senator and received the emoluments of the office. If petitioner prevails here, she will be entitled to resume said office until a new election can be held. Since the Mississippi Legislature has annual sessions which convene in early January, prompt adjudication of this case is deemed necessary. Petitioner respectfully submits that a review of the record would indicate that this petition for a writ of certiorari should be granted, and that the judgment of the Mississippi Supreme Court, affirming the judgment of the Circuit Court, First Judicial District, Hinds County, Mississippi, should be set

aside, and respondent declared disqualified to hold public office.

Respectfully submitted

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Attorney for Petitioner

APPENDIX A

In the Supreme Court of Mississippi

State of Mississippi, on Relation of Jean D. Muirhead

v.

State Board of Election Commissioners and James Donald Spann

No. 46,794

Rodgers, Presiding Justice.

This litigation began as a petition in the nature of an application for a writ of quo warranto to determine who is entitled to hold the office of Senator of Post 5 of the 27th Senatorial District of Mississippi.

Jean D. Muirhead alleged that she is a resident of Hinds County, Mississippi, and that at that time she held the office of Senator, Post 5 of the 27th Senatorial District. She alleged that James Donald Spann is also a resident of the aforesaid district, that the Mississippi Legislature changed the district number to District 22, and that both parties were candidates for the office of Senator from the new district.

She alleged that James Donald Spann was challenged before the Hinds County Election Commission on the ground that he was a convicted felon, having been convicted in the U. S. District Court for the Southern District of Mississippi. There are several exhibits attached to the petition showing that James Donald Spann pleaded guilty to five counts in an indictment charging him with the possession and operation of an unregistered still, and also concealment of tax due and unpaid on whiskey in unstamped containers.

The verified petition filed by Jean D. Muirhead has attached thereto, as Exhibit B, the minutes of the October 4, 1971 meeting of the Hinds County Election Commission, wherein it is shown, among other things, that "Mr. Coxwell, representing the Republican Party and Mrs. Jean Muirhead, offered the opinion that Section 680 (sic) of the Mississippi Constitution did cover this type conviction."

The following minutes dated October 5, 1971, appear as Exhibit B, Page 4, attached to the verified petition filed in the Circuit Court:

> "The Hinds County Election Commission in Executive Session this the 5th day of October, 1971, re the case of petition filed by Mrs. Jean Muirhead, Incumbent Senator (Republican nominee) to disqualify Mr. Don Spann, Democratic nominee, for the position of Senate Post No. 5, Senate District 22, does hereby rule that Mr. Don Spann's name will remain on the ballot for the General Election of November 2, 1971."

James Donald Spann filed a general demurrer to the petition for quo warranto, and the Circuit Court sustained the demurrer and dismissed the petition. The petitioner, Mrs. Jean D. Muirhead, has appealed to this Court and now contends that she was not a party to the challenge made before the Election Commission; that she was the duly elected Senator with the right to hold the office until her successor was elected; that James Donald Spann, who received a majority of the votes, was ineligible to hold the office; and, in effect, that she should be permitted to hold the office until a special election could be held to determine her successor.

An examination of the record, however, convinces us that the trial court was correct in sustaining the demurrer for the following reasons.

A private person is permitted to bring a petition, on information in quo warranto, to try the right of an office in the name of the State of Mississippi:

> "**First.**—Whenever any person unlawfully holds or exercises the functions of any public office, civil or military, or franchise, or any office in any corporation, city, town, or village, **and to try the right to any such office.**" (Emphasis added) Sec. 1120, Miss. Code 1942 Ann. (1956).

This Court has held that the foregoing quo warranto proceeding is the proper remedy to contest the qualifications of a successful candidate to hold the office. McKenzie v. Thompson, 186 Miss. 524, 191 So. 487 (1939); May v. Young, 164 Miss. 35, 143 So. 703 (1932).

The appellees contend, however, that since the petitioner challenged the right of the defendant James Donald Spann to the office before the County Election Commissioners, and Mrs. Muirhead did not appeal from their adverse order, she is precluded from filing an information to obtain a quo warranto writ. They cite **Powe v. Pittman**, 253 Miss. 844, 179 So. 2d 563 (1965), as authority for this contention. The **Powe** case, however, is not applicable here because it is based upon a mandamus case previously decided under the limited authority of the election and registration statutes. **See**: Powe v. Forrest County Election Commission, 249 Miss. 757, 163 So. 2d 656 (1964). It does, however, bring into focus the procedure of appeal from an administrative agency.

The basis of appellant's claim is that she was the duly elected Mississippi Senator of Post 5, Senatorial District Number 27, and as such was entitled to hold over as Senator of Post 5 in the new Senatorial District until her successor was elected and qualified for the office. **See**: Sec-

tion 136, Mississippi Constitution (1890) and Section 3228, Mississippi Code 1942 Annotated (1956).

Without making a study of the issue as to whether or not the petitioner was a party to the challenge before the Hinds County Election Commission we go directly to the question raised in the challenge and in the quo warranto proceedings, namely, does the plea of guilty to a federal charge disqualify a person from holding a state office.

Petitioner contends that James Donald Spann is a felon, having pled guilty to a felony charge in the U. S. District Court; and, therefore, he is precluded from holding office under the terms of Section 44, Mississippi Constitution (1890). The pertinent parts of this section are as follows:

> "Section 44. No person shall be eligible to a seat in either house of the legislature, . . . who shall have been convicted of bribery, perjury, or other infamous crime; . . ."

The term "infamous crime" is defined in Section 680, Mississippi Code 1942 Annotated (1956), as follows:

> "The term 'infamous crime' when used in any statute, shall mean offenses punished with death or confinement in the penitentiary."

The definition of words used in statutes by the Legislature are made to aid the courts in interpreting the statutory intent of the Legislature. On the other hand, the meaning of words found in the Constitution are for the interpretation of the Supreme Court. Although definitions of words used by the Legislature may be persuasive in determining the meaning of words in the Constitution, they are not controlling.

In the case of **Brady v. Howe,** 50 Miss. 607 (1874), this Court held that for one to be guilty of an infamous crime

there must have been a judicial conviction. Does this mean a conviction in any court of the United States or in the Federal Court, or is it limited to the convictions had in the courts of Mississippi?

This Court held in the case of **State v. McDonald**, 164 Miss. 404, 145 So. 508 (1933), that in order to disqualify a person from serving in an elective office within Mississippi, the person must have been convicted by a court in Mississippi.

In the **McDonald** case, *supra*, the record shows that McDonald had pleaded guilty to a perjury indictment in the District Court of the United States for the Eastern Division of Louisiana.

This Court had this to say in the **McDonald** case:

> ". . . [T]he record shows that the charge relied upon herein is based on a violation of the laws of the United States and not the laws of the State of Mississippi, and the conviction complained about, being a proceeding in the federal court and not a state court, would not be within the terms of disqualification for holding office, as fixed by our laws.
>
> ". . . 'Where the constitution contains such a provision it applies to crimes committed under the jurisdiction of the state providing the disqualification and not to crimes against another government.'" 164 Miss. at 418-19, 145 So. at 511.
>
> . . .
>
> ". . . 'We are of the opinion that upon well-settled principles and sound reason the statute is confined to a conviction in this state.'
>
> "We are of the opinion that, insofar as the charge of disqualification on account of conviction of crime is concerned, the court below committed no error in

excluding the evidence, ..." 164 Miss. at 421, 145 So. at 512.

McDonald, *supra*, has been cited in many cases throughout the nation as authority for the proposition that conviction of a crime in another jurisdiction does not disqualify one from holding office in the state where the person is elected. There are several reasons given for this rule, but the one most quoted seems to be the one mentioned in **Logan v. United States**, 144 U. S. 263, 12 S. Ct. 617, 630, 36 L. ed 429 (1892), and quoted in **Gutterman v. State**, 141 So. 2d 21 (Fla. 1962), as follows:

> " 'At common law, and on general principles of jurisprudence, when not controlled by express statute giving effect within the State which enacts it to a conviction and sentence in another State, such conviction and sentence can have no effect, by way of penalty, or of personal disability or disqualification, beyond the limits of the State in which the judgment is rendered.' . . ." 141 So. 2d at 23.

McDonald, *supra*, was cited in **Isaacs v. Board of Ballot Commissioners**, 122 W. Va. 703, 12 S. E. 2d 510 (1940). The facts in that case are almost identical to the facts here before the Court. In that case one Greely Isaacs challenged the candidacy of C. J. Marcum for the office of Member of the House of Delegates from Lincoln County. It appears that Marcum received the greater number of votes in a Democratic Primary; that he was challenged by a mandamus petition upon the ground, among others, that he had been convicted of a felony in the District Court of the United States for the Southern District of West Virginia, and that he was sentenced to a federal prison.

The petition was based upon the proposition that the Constitution of West Virginia prohibited the defendant

from holding office. The constitution in that state is similar to the Constitution of Mississippi on this subject. It is as follows:

> "No person who has been, or hereafter shall be convicted of bribery, perjury, or other infamous crimes, shall be eligible to a seat in the Legislature." 122 W. Va. at 705, 12 S. E. at 512.

In addition to the reasons set forth in **McDonald**, *supra*, the West Virginia Court had this to say:

> "The right of a citizen to hold office is the general rule; ineligibility the exception. Courts are hesitant to take action resulting in deprivation of the privilege to hold office, except under clear and explicit constitutional or statutory requirement. This just and magnanimous judicial approach is exemplified in our case, Webb v. County Court, 113 W. Va. 474, 168 S. E. 760, 761. Therein we said:
>
> > 'It is the anxious desire of the state that those of her citizens who have transgressed her laws, suffered convictions, and paid the penalty of the law, shall profit from their unfortunate experience and thereafter make of themselves good citizens by leading lives of uprightness and usefulness.' " 122 W. Va. at 705, 12 S. E. 2d at 512.

We are aware that there are some cases which hold to the contrary, one of which is the case of **State ex rel. Olson v. Langer**, 65 N. D. 68, 256 N. W. 377 (1934) in which the McDonald case is cited both in the majority opinion and in a well-reasoned dissent. Some of the cases holding the contrary view have well-reasoned dissents attached to the majority opinions. For example, see Hulgan v. Thornton, 205 Ga. 753, 55 S. E. 2d 115 (1949).

In the case of **Crothers v. Jones**, 239 La. 800, 120 So. 2d 248 (1960), the Louisiana Court pointed out that where

the Constitution of that state referred to "crimes punishable in the Penitentiary" it refers to the Louisiana Penitentiary. In that case the person challenged had been convicted under an indictment in a federal court.

It is apparent to us that the words "in the penitentiary" used in Section 680, Mississippi Code 1942 Annotated (1956) above quoted refers to the Mississippi Penitentiary, and not the federal penitentiary.

In **Daughdrill v. Daughdrill**, 180 Miss. 589, 178 So. 106 (1938), we pointed out that "the" penitentiary does not mean just any penitentiary or "a" penitentiary, but means the Mississippi Penitentiary.

After having examined the problem here at issue in all its facets, we are driven to the conclusion that the quo warranto petition was properly dismissed and that the successful candidate James Donald Spann was and is qualified to hold the office of Mississippi State Senator.

The judgment of the Circuit Court must therefore be affirmed.

Affirmed.

Patterson, Inzer, Smith and Robertson, JJ., Concur.

APPENDIX B

In the Supreme Court of Mississippi

Monday, March 20, 1972, Court Sitting : : : : : :

State of Mississippi, on Relation of Jean D. Muirhead.

No. 46,794 vs.

State Board of Election Commissioners and James Donald Spann.

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of the First Judicial District of Hinds County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 20th day of December 1971 —be and the same is hereby affirmed. It is further ordered and adjudged that the appellee do have and recover of and from the appellant all of the costs of this appeal to be taxed for which let proper process issue.

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APPENDIX C

In the Supreme Court of Mississippi

Monday, April 10, 1972, Court Sitting : : : : : : :

Jean D. Muirhead.

No. 46,794 vs.

State Board of Election Commissioners and James Donald Spann.

This cause this day came on to be heard on the petition for rehearing filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be denied doth order and adjudge that said petition be and the same is hereby denied.

Minute Book "BP" Page 553

APPENDIX D

SECTION 44

Mississippi Constitution

No person shall be eligible to a seat in either house of the legislature, or to any office of profit or trust, who shall have been convicted of bribery, perjury, or other infamous crime; and any person who shall have been convicted of giving or offering, directly, or indirectly, any bribe to procure his election or appointment, and any person who shall give or offer any bribe to procure the election or appointment of any person to office, shall, upon conviction thereof, be disqualified from holding any office of profit or trust under the laws of this state.